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7 DEMETRIUS A. WRIGHT,
8 Plaintiff,
9 v.
10 CITY OF OAKLAND, et al.,
11 Defendants.

Case No. [20-cv-07068-JD](#)

ORDER

Re: Dkt. Nos. 33, 37

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13 Demetrius Wright, a former detainee and current state prisoner, filed a pro se civil rights
14 action under 42 U.S.C. § 1983. He alleges that defendant police officer Allen failed to properly
15 address his medical needs during questioning, and that Chief of Police Kirkpatrick and the City of
16 Oakland failed to properly train and supervise Oakland police officers including Allen.
17 Defendants filed a motion for summary judgment and plaintiff filed a motion to amend to add new
18 defendants and amend his allegations. The motion to amend was denied without prejudice for the
19 new allegations and for the request to add Oakland Police Officers Fiorino and Borgna as
20 defendants. The Court indicated that the motion to amend would be considered during the review
21 of the summary judgment motion.

22 After reviewing the summary judgment filings, this case was stayed and administratively
23 closed pending the resolution of post-decision *J.K.J. v. City of San Diego*, 17 F.4th 1247 (9th Cir.
24 2021). In that case, the circuit court determined that police officers were entitled to qualified
25 immunity in connection with the death of a pregnant detainee who they had observed vomiting in
26 a patrol car. *Id.* at 1252-53.

27 In February 2023, the Ninth Circuit voted to rehear the case *en banc* and the three-judge
28 panel opinion was vacated. *J.K.J. v. City of San Diego*, 59 F.4th 1327, 1328 (9th Cir. 2023)

1 (unpublished). After oral argument before the *en banc* court, the parties filed a joint motion to
2 stay the appellate proceedings pending settlement. The parties then filed a joint motion to
3 voluntarily dismiss the appeal and on November 27, 2024, the Ninth Circuit granted the motion to
4 dismiss the appeal, and the order constituted the mandate of the Court. *J.K.J v. City of San Diego*,
5 2024 WL 4899532 (9th Cir. Nov. 27, 2024) (unpublished).¹

6 Now that the *JKL* appeal has concluded, the stay is lifted and this case is reopened. After
7 reviewing the filings for the motion to amend and the motion for summary judgment, the Court
8 grants leave for plaintiff to amend, considering that plaintiff is litigating this case pro se while
9 incarcerated and in light of the extensive medical issues plaintiff suffered following his arrest.
10 Service will be ordered on the two new defendants and the case continues with the proposed
11 amended complaint. The motion for summary judgment is denied without prejudice and
12 defendants may refile an amended motion at a later date. After the new defendants are served, this
13 case will first be referred for mediation and the parties may discuss a global settlement with
14 plaintiff's other case in this Court.²

15 For the foregoing reasons:

16 1. The stay is lifted and this case is reopened. The motion for summary judgment
17 (Dkt. No. 33) is denied without prejudice and the motion to amend (Dkt. No. 37) is granted.
18 Oakland Police Officers Fiorino and Borgna are added as defendants to this case which now
19 continues on the amended complaint (Dkt. No. 37). Once defendants waive service or are served,
20 and counsel for them appears, this case will be referred for mediation to the Northern District of
21 California Pro Se Prisoner Mediation Program.

22 2. The Clerk will issue a summons and the United States Marshal will serve, without
23 prepayment of fees, copies of the amended complaint (Dkt. No. 37) with attachments and copies

25 ¹ The three-judge panel's decision is not precedential because it was vacated and not reinstated by
the *en banc* Court. See 9th Cir. R. 40-3, Advisory Note 2.

26 ² Plaintiff continues with a second case against Allen, Kirkpatrick, Alameda County, and Sheriff
Ahern regarding a delay in arraignment while in custody of the county and in the hospital. *Wright*
27 *v. Alameda County*, Case No. 20-cv-07067-JD. Sheriff Ahern and Alameda County reached a
settlement with plaintiff and were dismissed from the action. *Id.* Dkt. No. 29. The case was
28 stayed, and Allen and Kirkpatrick were to file a briefing schedule in Case No. 20-cv-7067, once
the summary judgment in the instant case was resolved.

1 of this order on Oakland Police Officers Marisa Fiorino and Giovana Borgna. The Clerk is also
2 requested to serve a copy of this order on the plaintiff.

3 3. All communications by plaintiff with the Court must be served on defendants, or
4 defendants' counsel once counsel has been designated, by mailing a true copy of the document to
5 defendants or defendants' counsel.

6 4. It is plaintiff's responsibility to prosecute this case. Plaintiff must keep the Court
7 informed of any change of address by filing a separate paper with the clerk headed "Notice of
8 Change of Address." He also must comply with the Court's orders in a timely fashion. Failure to
9 do so may result in the dismissal of this action for failure to prosecute pursuant to Federal Rule of
10 Civil Procedure 41(b).

11 **IT IS SO ORDERED.**

12 Dated: February 28, 2025

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United States District Court
Northern District of California

JAMES DONATO
United States District Judge